IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 5352 (S/S) of 2001
Old Number
(Writ Petition No. 28034 of 1997)

Deepak Singh Tomar,
Son of Sri late Sri Sukhpal Singh Tomar,
Resident of Village and Post-Bhogpur,
District- Dehradun. ……Petitioner.

Versus

1. Executive Engineer, Temporary Division, Lok Nirman Vibhag, Rishikesh.
2. Superintending Engineer, 24th Circle, Public Works Department, Dehradun.
3. Executive Engineer, Prantiya Khand, Lok Nirman Vibhag, Dehradun.

…….Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri S.N. Babulkar, Sr. Advocate, assisted by Sri Anil Bisht, learned counsel for the petitioner and leaned standing counsel for the State of Uttaranchal.

Learned counsel for the parties are agree to decide the writ petition at its admission stage itself.

By means of this writ petition, petitioner has prayed to issue a writ in the nature of mandamus commanding the respondent no. 2 to provide him appointment on the post of lower division clerk under Dying in Harness Rules as per his qualification.

The writ petition was filed in the year 1997 and after creation of State of Uttaranchal the present writ petition has been transferred to this High Court. On 29.08.1997, the Allahabad High Court directed the respondents to file,

counter affidavit but the respondents have not filed counter affidavit till date.

The brief facts of the case are that the father of the petitioner was initially appointed in the year 1976 on daily wage basis in the temporary division of Public Works Department, Rishikesh, Dehradun. From 1988, late Sri Sukhpal Singh Tomar, father of the petitioner, was allowed to work as work charge employee on the post of Mate. The services of the petitioner's father were regularized on the post of Mate with effect form 23.11.1995 vide order dated 27.12.1995 passed by respondent no. 3 i.e. Executive Engineer, Prantiya Khand, Lok Nirman Vibhag, Dehradun. Late Sri Sukhpal Singh Tomar, while working at Rishikesh died in harness on 25.06.1996. Petitioner's father was the only earning member in the family and after the death of his father, he made an application dated 26.08.1996 to the Executive Engineer, Temporary Division, Public Works Department, Rishikesh for providing him appointment under Dying in Harness Rules on the post of Junior clerk as he was eligible to be appointed as Junior Clerk as per his qualification. However, no action was taken on the petitioner's application. Thereafter, petitioner moved another application dated 18.10.1996 with a prayer to consider him for appointment on the post of Lower Division Clerk under Dying in Harness Rules. The application of the petitioner dated 18.10.1996 was forwarded by the Executive Engineer, Temporary Division, Public works Department, Rishikesh on 05/06.11.1996 to the Superintending Engineer, 24th Circle, Public Works Department, Dehradun along with his recommendation. A copy of the letter dated 5/6.11.1996 is annexed with the writ petition as Annexure No. 4 In spite of

the recommendation made by the Executive Engineer no action has been taken by he respondent no. 2 and the petitioner was compelled to file the present writ petition.

Learned counsel for the petitioner has submitted that he has received information that respondents have provided appointment to the petitioner on Class IV post as daily wage.

It is will settled law that appointment under Dying in Harness Rules should not be provided on daily wage basis and any appointment made on daily wage basis under Dying in Harness Rules should be treated as regular appointment. Consequently, respondents are direction to treat the petitioner's appointment on regular basis and pass suitable order in this regard.

Learned counsel for the petitioner has submitted that as per his qualification petitioner is entitled to be appointed as Lower Division Clerk under Dying in Harness Rules and the Executive Engineer has also given his recommendation to the effect that the petition may be provided appointment on the post of Lower Division Clerk. In spite of the recommendation and education qualification of the petitioner he has been provided appointment on Class IV post and that too on daily wage basis.

In support of his contention learned counsel for the petitioner has placed reliance on Hon'ble Supreme Court's decision passed in Smt. Phoolwati Vs. Union of India and others, reported in AIR 1991 Supermen court 469 wherein the Apex Court has directed to Union of India to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his education qualification.

In view of the above facts, the petitioner may make representation to the Superintending Engineer, 24th Circle, Public Woks Department, Dehradun i.e. respondent no. 2 within a period of two weeks and respondent no. 2 shall take decision on the petitioner's representation within a period of four week from the date of production of certified copy of this order along with representation.

With this direction the writ petition is finally disposed of accordingly. No order as to costs.

(M.M. Ghildiyal, J.)

September 15, 2005
SKSharma